

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

Clerk's Minutes
Before the Honorable James O. Browning

CASE NO. 15-4268JB

DATE: December 17, 18, 2018

TITLE: *USA v. DeLeon, et al.*

COURTROOM CLERK: C. Bevel

COURT REPORTER: J. Bean

COURT IN SESSION: 8:34AM-10:02AM=1.28
10:19am-11:46am=1.27
1:00pm-2:31pm=1.31
2:46pm-4:16pm=1.30
4:30pm-5:33pm=1.03

TOTAL TIME: 10 HR 48 MIN

Day 2:

8:31am-10:01am=1.30
10:17am-11:46am=1.29
12:55pm-1:45pm=.50

TYPE OF PROCEEDING:

- 1: MOTION to Produce *Post-Conviction Discovery and for In Camera Review* by Billy Garcia [Doc. 2416]
- 2: Daniel Sanchez's motion to Dismiss Case for Government's Outrageous Misconduct and Violation of Brady v. Maryland [Doc. 1841]
- 3: Daniel Sanchez's Motion for New Trial or Judgment of Acquittal [Doc. 2408]
- 4: Carlos Herrera's Motion for New Trial [Doc. 2413]
- 5: Anthony Baca's Motion for New Trial [Doc. 2421]
- 6: Edward Troup's Motion for New Trial [Doc. 2420]
- 7: Arturo Garcia's Motion for Acquittal or in the Alternative, Dismissal Pursuant to 12(b)(2) [Doc. 2422]
- 8: Gallegos' Joint Motion for New Trial, Rule 29 Motion for Judgment of Acquittal or in the Alternative Motion for New Trial with regard to Counts Four and Five [Doc. 2415]
- 9: Andrew Gallegos' Motion for New Trial [Doc. 2418]
- 10: Joe Gallegos' Motion for New Trial [Doc. 2419]

COURT RULING: Court inclined to deny all motions for new trial. Opinions will be issued.

ATTORNEYS PRESENT FOR PLAINTIFF(S):

Maria Armijo, Randy Castellano

ATTORNEYS PRESENT FOR DEFENDANT(S):

Jim Castle, Robert Cooper, Cori Harbour-Valdez, Pat Burke, Benjamin Brock, Scott Davidson, Carey Bahalla William Maynard, Donavon Roberts, Lisa Torracco, Amy Jacks, Lauren Noriega, Mark Lowery

PROCEEDINGS:

8:34am Court in session, counsel enter appearances, defendants present in custody. Court addresses counsel, will take up motions in proposed order provided by counsel. First will be Doc. 2416 MOTION to Produce *Post-Conviction Discovery and for In Camera Review* by Billy Garcia.

Court admits Defendants Exhibits A and B for Doc. 2416

8:41am Mr. Castle calls witness Agent Bryan Acee, sworn.

8:41am Mr. Castle conducts direct exam of Agent Acee.

9:44am Ms. Armijo conducts cross exam of witness Agent Acee.

9:56am Ms. Armijo moves to admit exhibit 1, objection by Mr. Castle.

9:58am Court admits exhibit 1 without objection by Mr. Castle

10:02am Court in recess.

10:19am Court in session.

10:20am Mr. Lowery requests one hand of defendant be freed of hand cuff so he is able to write.

10:20am USM Mickendrow response, not enough security present in courtroom to allow for it.

10:20am Ms. Armijo continues with cross exam of witness Agent Acee.

10:23am Mr. Castle conducts re-direct exam of witness Agent Acee.

10:29am Court excuses Agent Acee.

10:29am Mr. Castle requests written closing arguments in support of Motion.

10:32am Second Motion. 1841 Motion to Dismiss case for Government Outrageous Conducts violations of Brady v. Maryland.

10:35am Ms. Jacks argues in support of Motion

10:36am Court indicates defendant should mark trial exhibit S (FBI 302 by Agent Stemo), Trial exhibit T, (Agent Sainato's notes) Exhibit A to hearing on Doc. 1841, Exhibit B to 1841, Exhibit C Agent Sainato testimony.

10:38am Ms. Jacks conducts direct exam Agent Stemo, Agent sworn.

10:53am Ms. Jacks moves to admit D, FBI report 2/24/17 to Doc. 1841, 3/27/17 report marked as E, report 8/22/17 marked as exhibit F.

10:54am Court admits defendant D, E and F as exhibits to Doc. 1841.

11:19am Ms. Jacks moves to admit Exhibit G, per Mr. Castellano indicates same as doc. 2451-11 exhibit.

11:19am Court admits exhibit G.

11:29am Court inquires about oral joinders on Ms. Jack's Motion, 1841.

11:30am Ms. Bahalla indicates oral joinder, Mr. Lowery agrees.

11:30am Court recalls that everyone joined orally.

11:30am Mr. Castellano conducts cross exam of witness Agent Stemo.

11:37am Ms. Jacks conducts re-direct exam of Agent Stemo.

11:45am Mr. Castellano conducts re-cross exam of Agent Stemo.

11:46am Court in recess.

1:00pm Court in session.

1:00pm Mr. Castellano continues with cross exam of witness Agent Stemo, moves to admit Exhibit 13, (trial exhibit FV), Exhibit 12 (Trial exhibit FL).

1:00pm Court admits Exhibits 12 and 13 for purposes of this hearing.

1:03pm Ms. Jacks conducts re-direct exam of witness Agent Stemo.

1:05am Court excuses witness Agent Stemo.

1:06am Ms. Jacks indicates defendant requested via Tui letter for Mr. Beck or Mr. Castellano to testify.

1:07am Mr. Castellano indicates more exhibits to be admitted. Asks Court to take notice of attachments (exhibits) to government's response Doc. 2451. 1-15

1:10pm Court 1-11, 14, 15 admitted; without objection by defendants.

1:11pm Mr. Castellano moves to admit trial testimony of Timothy Martinez exhibit 16; Ms. Jacks has no objections; no objection by any other defendant.

1:12pm Court admits exhibit 16, 17, 18, 19 without objection by any defendant.

1:17pm Ms. Jacks argues in support of Motions Docs. 1841 and 2408.

1:28pm Mr. Castellano responds argues in opposition of Motions, Docs. 1841 and 2408.

1:39pm Ms. Jacks responds.

1:43pm Court denies motions, will issue opinion.

1:43pm Court turns to Mr. Herrera's Motion for New Trial [Doc. 2413]

1:43pm Ms. Bahalla moves to admit exhibits A-G for [Doc. 2413]

1:52pm Court admits exhibits A-G for [Doc. 2413]

1:53pm Ms. Bahalla continues with arguments in support of Doc. 2413.

1:57pm Mr. Castellano responds.

2:01pm Mr. Castellano moves to admit exhibits attached to response, Doc. 2454.

2:04pm Court admits exhibits 1-4 for purposes of Doc. 2454.

2:06pm Ms. Bahalla continues with arguments in support of Motion 2413.

2:31pm Court in recess.

2:46pm Court in session.

2:46pm Court addresses counsel regarding post trial disclosure.

2:47pm Ms. Bahalla responds.

2:50pm Ms. Jacks has nothing to add.

2:50pm Mr. Castellano responds.

3:04pm Ms. Bahalla responds.

3:11pm Court will take a closer look, did not see anything that stand out, inclined to deny Motion.

3:12pm Mr. Lowery addresses Motion Doc. 2421 Baca's Motion for New Trial. Requests exhibits attached to motion to come in.

3:19pm Mr. Lowery moves to admit exhibits A-EE

3:30pm Mr. Lowery calls Lornar Delgado, witness sworn.

3:30pm Mr. Lowery conducts direct exam of witness Delgado.

3:39pm Mr. Lowery moves to admit exhibit U; no objection by Ms. Armijo.

3:40pm Court admits exhibit U.

3:48pm Mr. Lowery moves to admit exhibit V; no objection by Ms. Armijo.

3:49pm Court admits exhibit V.

3:52pm Ms. Armijo conducts cross exam of Leonar Delgado.

3:55pm Court excuses witness Leonar Delgado.

3:55pm Mr. Lowery calls witness James Brewster, witness sworn.

3:57pm Mr. Lowery conducts direct exam of James Brewster.

4:14pm Ms. Armijo moves affidavit of Mr. Brewster as exhibit 1. No objection by defendants.

4:14pm Court admits exhibit 1 to Doc. 2421.

4:16pm Court in recess.

4:30pm Court in session.

4:30pm Ms. Armijo continues with cross exam of witness Brewster.

4:37pm Mr. Lowery conducts re-direct exam of witness Brewster.

4:37pm Court excuses witness Brewster.

4:37pm Ms. Armijo moves to admit exhibits 1-4

4:39pm Ms. Armijo calls witness Sergio Sapien, sworn

Ms. Armijo moves to admit exhibit 8 – north facility; no objection by defendants.

4:40pm Court admits exhibit 8, 9, 10.
5:02pm Mr. Lowery conducts cross exam of witness Sapien.
5:20pm Ms. Armijo conducts re-direct exam of witness Sapien.
5:22pm Court excuses witness Sapien.
5:22pm Ms. Armijo moves to admit trial transcript as exhibit 11.
5:24pm Court admits exhibit 11; without objection by any defendant.
5:24pm Court admits exhibit FF; without objection by Ms. Armijo.
5:25pm Court grants 2442 and 2443, without objection by any defendant.
5:26pm Mr. Lowery argues in support of admission of exhibit FF.
5:33pm Ms. Armijo will respond tomorrow morning.
5:33pm Court in recess.

Day 2: 12/18/18

8:31am Court in session.
8:31am Ms. Armijo argues in opposition of admission of exhibit FF.
8:39am Court connects Mr. Castle via phone.
8:39am Court inclined to think this new information is not enough to grant a new trial.
8:40am Mr. Burke argues in support of Motion for New Trial Doc. 2420.
9:32am Mr. Cooper indicates nothing more to add.
9:33am Mr. Benjamin proceeds to argue in support of Joe Gallegos' Motion Doc. 2419.
9:45am Mr. Davidson argues in support of Motion.
9:47am Mr. Castle argues in support of Motion.
9:52am Court responds regarding adjournment.
9:58am Court inquires of Mr. Castle, Mr. Burke regarding CJA payments.
9:58am Mr. Castellano responds in opposition of Motions, 2419.
10:01am Court in recess.
10:17am Court in session.
10:17am Mr. Castellano continues, argues in opposition.
10:29am Court requests Mr. Castellano ask appellate attorney- possibly Richard Williams about error on jury instructions.
10:30am Mr. Burke responds.
10:35am Mr. Benjamin has nothing further.
10:35am Court will track down opinion, if not issued, will be soon. Not inclined to revisit

severance issue. That is something for appeal. Court will look more at jury instructions, court does not feel any error there.

10:41am Court turns to Arturo Garcia's Motion for Acquittal or In the Alternative, Dismissal Doc. 2422.

11:03am Mr. Benjamin and Mr. Cooper agree with arguments of Mr. Davidson.

11:11am Mr. Davidson responds.

11:17am Ms. Jacks, Mr. Lowery and Ms. Bahalla have nothing further.

11:18am Court inclined to deny motion and leave it in place, let the Appellate court decide.

11:20am Mr. Davidson responds.

11:22am Ms. Torracco argues in support of Motion Doc. 2418. Moves to admit exhibits A and B without objections from Ms. Armijo.

11:22am Court admits exhibits A and B.

11:42am Court responds, not seeing a Bruton issue.

11:45am Ms. Torracco requests to brief issue in writing.

11:46am No other defendants have anything.

11:46am Court in recess.

12:55pm Court in session.

12:55pm Ms. Armijo indicates she will be replying to Ms. Torracco's brief in writing.

1:03pm Ms. Torracco has nothing further.

1:03pm Court will review filings thoroughly. Inclined to deny motion.

1:05pm Mr. Benjamin argues in support of Motion 2415.

1:17pm Ms. Torracco indicates they joined the motion in writing.

1:17pm Ms. Armijo responds, argues in opposition of Motion 2415.

1:23pm Mr. Benjamin responds.

1:25pm Court responds.

1:27pm Mr. Benjamin requests clarification.

1:28pm Ms. Armijo addresses court regarding Mr. Castle's request.

1:30pm Mr. Castle responds.

1:35pm Mr. Lowery moves exhibits O, P, Q, R, S, T; no objections by Ms. Armijo.

1:35pm Court admits exhibits O, P, Q, R, S, T.

1:37pm Mr. Davidson joins motion 2413 and motion 2420.

1:37pm Court not seeing anything that would warrant new trials or acquittals. Court addresses

counsel regarding concerns about cooperators not being sentenced; would like to see those move forward. Court will continue working on opinions.

1:42pm Ms. Armijo inquires about timeframe for briefing from Ms. Torracco, Mr. Lowery.

1:43pm Ms. Torracco indicates January 15.

1:43pm Mr. Lowery indicates January 4.

1:43pm Mr. Cooper indicates Mr. Castle would address it.

1:44pm Mr. Castle indicates after transcript of Acee testimony, requests January 2nd.

1:45pm Counsel thank the Court.

1:45pm Court in recess.